

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR  
BENCH, JAIPUR

**ORDER**

S.B. CIVIL WRIT PETITION No.4068/2002  
ALI BAHADUR V/S BOARD OF REVENUE & Ors.

DATE OF ORDER

19.2.2007

PRESENT

**HON'BLE MR. JUSTICE MOHAMMAD RAFIQ**

Shri Mukesh Kumar Verma for the petitioner.  
Shri Manish Bhandari for the respondents.  
Shri B.S. Chhaba, Dy. G.A.

The petitioner has come up in this writ petition against the order dated 3.7.98 passed by the District Collector, Sawaimadhopur refusing to renew the permission to run a brick kiln and the judgment dated 5.6.1999 passed by the Revenue Appellate Authority, Sawaimadhopur rejecting his appeal.

The respondents have refused to renew the permission to the petitioner for running the brick kiln on the land of Khasra No.1998/1 on the premises that the same has now come in the vicinity of the population located at a distance of half Km from the other limit of village Chauth-ka-Barwara. According to the provisions contained in Rule 7(2)(a) of the Rajasthan Land Revenue (Allotment and Conversion of Land for Establishment of Brick Kilns) Rules, 1987 (for short "the Rules of 1987"), the brick kiln should be located at a distance of 1 Km. from the populated area.

Learned counsel for the petitioner, Shri Mukesh Kumar Verma argued that all the authorities below have failed correctly appreciate the provisions of Rule 7(2)(a) of the Rules of 1987 because the said rule was already inserted in the Rules on 22.2.1991 whereas the initial allotment of the land was made to the petitioner much thereafter on 5.2.197. The petitioner had been granted lease-deed for 99 years for running a brick kiln. Not only the petitioner, the land was allotted to one Srinarayan also for running the brick kiln in the same Khasra No.1998/1. While in the case of Srinarayan. The respondents have renewed the permission but they have demanded such renewal to the petitioner. This was clearly discriminatory.

On the other hand, the learned Dy. Government Advocate opposed the petition and argued that the distance from the populated village is a matter of fact which having been concurrently held to be only half Km by three authorities below, cannot be reopened by this court in the remedy of writ. He argued that even if renewal has been allowed to another brick kiln, that would not give any right to the petitioner to perpetuate illegality by insisting upon a similar renewal.

Shri B.S. Chhaba, learned Dy. Government Advocate therefore prayed that the writ petition may be dismissed because none of the order passed by the authority below suffer from any error apparent on the face of record.

Having heard learned counsel for the parties, I find

that although it is a fact that the petitioner was allotted one bigha land out of the Khasra No.1998/1 by the revenue village Chouth-ka-Barwara which was recorded as Siway-chak vide order of the District Collector dated 18.5.1987 and granted permission to run the brick kiln but thereafter again by order dated 5.2.1993 the permission for renewal was declined. The land which was earlier allotted for setting up brick kiln may have been then located at a distance of more than 1 Km of the population but in course of time the inhabitant area may be expanded and eventually the distance from the brick kiln may be reduced. When the respondents have arrived at the satisfaction that the village Chouth-ka-Barwara is situated in the vicinity of the brick kiln at a distance of only half Km, this becomes a satisfaction of the authorities upon the appreciation of the factual aspect. This order having been upheld by the revenue authority as also by the Board of Revenue, the finding on such fact became final. So far as the argument of the discrimination on the ground that the permission granted to Srinarayan for running a brick kiln on the same Khasra No.1998/1 has been renewed is concerned, this argument cannot be accepted because two wrongs cannot make one right. If the respondents have permitted one person to make brick kiln within the same Khasra number and has denied the same to another, the matter would have to be tested from the point of illegality of the decision. Concept of equality cannot be

enforce in negativity. Although at the same time, it must be observed that it is for the respondent authorities to consider and decide whether a brick kiln can be allowed to run on the same land.

In the circumstances, I do not find any illegality or error in the orders impugned. The writ petition is accordingly dismissed.

(Mohammad Rafiq), J.

chauhan/